1947.

File No. Essen Supplies II/47 Pt II

Legal **DEPARTMENT**

B BRANCH

Subject:—

Rules and Notifications under the Essential Supplies (Temporary Powers) Act, 1941

(For previous papers please see Pt. I.)

35

File No. Essen Supplies II/47 Pt II

Std. Sectt. Slip 24 E. e.

29-B

CONTENTS.

Legal Department File No Essen. Supplies 11/47 Part II

Sr. No.	Compilation No.	Subject	Pages.
		The Essential Supplies Act, 1946	
1.	GNCSD No 65/ iv dated 19-1-47	Govt. of India - Newsprint Control (No 2) Order - 1947 -	1-6 (Not Compiled)
2.	UR to CSD No 7331 dated 15-7-47	Orders regarding declaration -	7-12
3.	UR to C of I No, 7316 dated 10-7-47	Sec 3 - Order under -	11-12 Not Printed 13-16
4.	UR to CSD No. 9458 dated 04-9-47	Sec 3 - Orders under regarding authorising certain officers to inspect premises etc. -	17-24
5.	UR to CSD No 9726 dated 6-10-47	Sec 3 - Orders in respect of grinding mills under -	25-28
6.	UR to CSD No. 10595 dated 6-11-47	Sec. 3- Making an Order parallel to the provisions of Govt. of India Order - feasibility of -	29-30
7.	UR to CSD No. 10894 dated 17-11-47	Whether power to "Regulate" includes the power to "Prohibit" - Opinion regarding -	31-32
8.	UR to CSD No.434 dated 9-12-47	Contl. Sec.3 Order under -	33-36

15/5

MM.
SC

Office of the R.I.A.

A revised draft Order in place of the one at p. 133 is sent herewith. The Explanation at the end of the Civil Supplies Department draft is unnecessary and has been deleted in the revised draft. Controller of Rationing's office is requested to see if it is suitable and carries out its intentions.

3. The draft notification on p. 141 ante as amended is in order. Controller of Rationing's office may consider whether the proposed amendment of the two Rationing Regulations may not be combined with the draft notifications at pages 105-107 ante.

3. Para. 6 of Controller of Rationing's office note at p. 140 ante:- Clause 16(1) / 20(1) of the City of Bombay / Bombay Suburban District Rationing Regulation, as sought to be amended by the proposed notifications at pages 105-107 ante would debar an authorised retail distributor from supplying rationed articles to a holder of ration card unless his ration card is duly stamped if so required under an order of the Provincial Government in that behalf. Consequently it will be necessary for Government to make an order under the said clauses for stamping ration cards issued upto a particular date. Mere issue of the proposed notifications at pages 105-107 and 133-35 ante will not achieve the object in view. The requisite orders in that behalf are sent herewith.

D.V.Vias
Remembrancer of Legal Affairs.

U. R. & C. S. D No 7331 Dated 16th July 1947.

ORDER.

No. - In exercise of the powers conferred by the Order published in Government Notification in the Civil Supplies Department No. C R 69 dated the July, 1947 (hereinafter referred to as the said Order) the Controller of Rationing, Bombay, hereby directs as follows, namely :-

1. The head of the family or the eldest member thereof, as the case may be (hereinafter referred to as the declarant) shall, during the weeks specified in column 2 of the Schedule hereto annexed, furnish information required under the said Order in respect of the persons specified in column 1 of the said Schedule to the persons specified in column 4 of the said Schedule at the places specified opposite to the weeks in column 3 thereof.

2. (i) Unless the foodgrains ration cards of the declarant and the members of his family and household are registered with more than one authorised retail distributor, the declarant shall furnish the information in respect of himself and the members of his family and household in only one form annexed to the said Order.

(ii) Where such foodgrains ration cards are registered with more than one authorized retail distributor, the declarant shall furnish such information in as many such forms as there are authorized retail distributors with whom such foodgrains ration cards are registered, each form containing the information about the head of the family and the members of his family and household registered with each authorized retail distributor.

3. The persons authorized to receive the information under clause 1 shall affix on each of the foodgrains ration cards produced before him under the said Order a rubber stamp containing the description

D.F. No.
Received

stamp containing the description

" D. F. No.

Received

and shall fill in the relevant particulars in the blank spaces therein.

Office of the D.L.A.

A revised draft Order is sent herewith.

2. It is presumed that the Numbering Officers will be appointed by the District Magistrate. Power to authorize persons to number premises has accordingly been given in the revised draft to the District Magistrate.

D.V.Vias

Remembrancer of Legal Affairs.

MM
50. dated 14th May, 1956.

Civil Supplies Department,

Bombay Castle, July 1947.

O R D E R.

Essential Supplies (Temporary Powers) Act, 1946.

No. 169/93 :- In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), read with the Government of India, Department of Food, Notification No. PY-603(2) 1, dated the 21st October 1946, the Government of Bombay is pleased to make the following order, namely :-

(1) The District Magistrate may authorise any person in respect of any area within his jurisdiction to paint on or affix to any premises in that area such letters, marks or numbers as may be necessary for facilitating their identification.

(2) No person occupying any premises within such area shall refuse such access thereto to any person authorised under clause (1) (hereinafter referred to as the Numbering Officer), as such Officer may require for the purpose of his work:

provided that in requiring access due regard shall be paid by the Numbering Officer to the social and religious customs of the occupier.

(3) No person shall voluntarily obstruct a Numbering Officer exercising any powers or performing any duties under this Order.

(4) No person shall remove, obliterate, alter or damaged before the x day of x 194 , any letters, marks or numbers affixed to or painted on any premises by the Numbering Officer.

x to be filled in

By order of the Governor of Bombay,

194

Office of the R.L.A.

In place of the Orders at pages 39-44 and 45-50 ante two revised draft Orders are sent herewith subject to the following observations :-

(1) It is made clear in the second revised Order that the Order is to be in force in the Province of Bombay excluding the City of Bombay and the Bombay Suburban District.

(11) Orders made under rule 81(2) of the Defence of India Rules have been kept in force by the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), or the Bombay Essential Commodities and Cattle (Control) Act, 1946 (Bom. XXII of 1946), according as the essential commodity in respect of which an Order has been issued, falls under the one or the other Act. For instance, the Orders at serial Nos. 5, 35 and 38 in the Schedule at pages 40-41 ante pertain to 'hay' 'firewood', and 'cotton seeds' respectively and are kept alive by the Bombay Essential Commodities and Cattle (Control(Act, 1946, and not by the Essential Supplies (Temporary Powers)Act, 1946 Similarly, the Orders at serial Nos. 34,43 and 40 in the Schedule at pages 45-50 ante pertain to 'cattle' 'fire-wood', and 'fodder' respectively and are kept alive by the said Bombay Act. It would not be legally feasible to authorise under the Essential Supplies (Temporary Powers) Act, 1946 officers with the powers of entry, seizure etc. in respect of Orders kept alive or issued under the Bomba Essential Commodities and Cattle (Control) Act, 1946. C.S.D. should therefore scrutinize the two Schedules from this point of view and retain in them only such Orders

as are relatable to the essential commodities as defined in the Essential Supplies (Temporary Powers) Act, 1946 and in respect of which the Provincial Government is now competent to make Orders. A similar Order may be issued under the Bombay Essential Commodities and Cattle (Control)Act in respect of Orders deemed to be issued or issued thereunder.

(iii) Secondly, the Government of India, Department of Food, Notification No. PY 603(3).1 ,dated the 31st October 1946 specifically excludes edible oils (other than coconut oil) and oilseeds from the scope of the notification. The Provincial Government is not therefore now competent to make any Order including the Orders for incidental matters of the nature under contemplation with respect to such oils and oilseeds. C.S.D. should therefore scrutinise the Schedules at pages 40-44 and 40 to 50 ante and find out if the Orders relating to edible oils (other than coconut oil) and oilseeds are included in the two Schedules.

(iv) Thirdly, it appears that the Order at serial No. 26/in the Schedule at pages 40-44 ante pertains to the fixing of prices of gands. Neither the Essential Supplies (Temporary Powers) Act, 1946, nor the Bombay Essential Commodities and Cattle (Control) Act, 1946, empowers the Government to make an Order in respect of gand (vide section 3 of the former Act and the Schedule to the latter Act). The Order in question is therefore no longer in force. C.S.D. should therefore examine the two Schedules at pages 40-44 and 46 to 50 ante respectively and exclude therefrom all Orders in respect of commodity not included in either of the two Acts and verify that the remaining Orders can be appropriately included in the Schedul

P.M. HDR.

Remembrancer of Legal Affairs.

U.R. to C.S.I, No. 9458 Date 24th Sept. 1947.

MM

C, dated 14 May, 1956.

Civil Supplies Department,
Bombay Castle, 1947.

Essential Supplies (Temporary Powers) Act, 1946.

O.E.D.E.R.

No 410/(a)/III- In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), read with the Government of India, Department of Food Notification, No.PT. 603(2)-I, dated the 31st October 1946, and in supersession of the Government Order in the Civil Supplies Department, No. 410(a)/II, dated the 10th August 1946, the Government of Bombay is pleased to direct that any of the following Officers may, in the City of Bombay and the Bombay Suburban District (i) enter upon and search any premises, vehicle, vessel or aircraft and seize any articles in respect of which he has reason to believe that a contravention of any of the Government Orders specified in the Schedule hereto appended has been, is being, or is about to be committed; and (ii) ask or cause to be asked of any person all necessary questions and require any person to produce any document and to take or cause to be taken copies of or extracts from such document relating to his business in any essential commodity to which any of the said Government Orders relates, namely:-

(1) The Food Controller, Bombay.

(2) The Joint Food Controller, Bombay.

(3) The Deputy Food Controller, Bombay.

(4) Assistant Food Controller, Bombay.

(5) Superintendents of godowns under the Food Controller, Bombay.

(6) Chief Inspectors and Senior Inspectors under the Food Controller, Bombay.

(7) Controller of Rationing, Bombay.

Contd. (21)

(8) Additional Director of Civil Supplies (Enforcement) Bombay.

(9) Deputy Director of Civil Supplies, Bombay.

(10) Assistant Directors of Civil Supplies, Bombay.

(11) Chief Inspectors, Senior Inspectors and Inspectors under the Additional Director of Civil Supplies (Enforcement), Bombay.

(12) Rationing Officers in the City of Bombay and the Bombay Suburban District

(13) Chief Inspectors, Deputy Chief Inspectors and Inspectors under the Controller of Rationing, Bombay

Explanation:- In this Order the expression "the Bombay Suburban District" shall mean the Bombay Suburban District, as constituted immediately before the 1st day of October 1945

SCHEDULE.

[Here enter A to A on pages 43,44 and 45]

By order of the Governor of Bombay,

Secretary to Government.

SC. dated 14th May, 1950.

Civil Supplies Department,
Bombay Castle, September 1947.

O R D E R.

Essential Supplies (Temporary Powers) Act, 1946.

No. 410/11-B In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), read with the Government of India, Department of Food, Notification, No.PY 103(8)- I dated the 21st October 1946, and in supersession of the Government Orders in the Civil Supplies Department, No.410/11, dated the 15th August 1946, the Government of Bombay is pleased to direct that any of the following Officers may in the Province of Bombay excluding the City of Bombay and the Bombay Suburban District as constituted immediately before the 1st day of October 1947 -

(i) enter into and search any premises, vessels, vehicles or aircraft in the areas within their respective jurisdictions and seize any articles in respect of which he has reason to believe that a contravention of any of the Government Orders specified in the Schedule hereto appended has been, is being or is about to be committed;

(ii) call or cause to be called any person all necessary questions and require any person to produce any document and to take or cause to be taken copies of or extracts from such document relating to the business to any essential commodity to which any of the said Government Orders relates,

namely:-

(i) Revenue Officers of and above the grade of Aval Karun,

(ii) Police Inspectors,

P.T.O.

(3) District Supply Officers.

(4) Officers of the Excise Department of and above the rank of Sub-Inspector.

(5) Police officers of and above the rank of Sub-Inspector specially appointed in each district for the enforcement of Government's orders regarding food supply.

(6) Rationing Officer and Assistant Rationing Officers.

(7) Officers in charge of revenue Circles.

(8) District Distribution Superintendents.

(9) Taluka Supply Assistants.

(10) Taluka Distribution Supervisors.

(11) Rationing Inspectors, Assistant Rationing Inspectors and Rationing Sub-Inspectors.

(12) Chief Paper Control Inspector, Divisional Paper Control Inspector, Deputy Paper Control Inspectors and Assistant Paper Control Inspectors.

SCHEDULE.

/Here enter A to A at pp.45-50 ante./

By order of the Government of Bombay.

Secretary to Government.

MM
5C. dated 14/5/'56.

Office of the R.I.A.

A revised draft order is sent herewith.

2. The words "save as otherwise directed in any particular case by the Director of Civil Supplies or Assistant Director of Civil Supplies, Bombay," occurring in Government order No. 771/1 dated 15-1-47 give in effect power to the Director of civil Supplies to exempt any particular person from the operation of the order; the exercise of such power does not amount to the exercise of any of the powers under section 3 of the Essential Supplies (Temporary Powers) Act, 1946, delegated to the Provincial Government under Government of India Notification No. PP. 600(3)-C, dated 21-10-1946. R.I.A's opinion No. 1304, dated 11-2-47, referred to by the C.S.D. has no application to the exercise of powers by the Director or the Assistant Director of Civil Supplies under the Government order referred to above.

3. In an order made under section 3 of the Act, it could be open to the Government to make a provision leaving it to the discretion of any subordinate authority, for example, the District Magistrate, to bring the order in force in any particular area. Such provision does not enable that authority to make what order it pleases for that area but to apply by notification to that area an order made by a proper legislative authority. A provision of this kind will be within the scope of the powers conferred upon the Provincial Government.

S.D.P.

Remembrancer of Legal Affairs.

G. R. & C.S.D. No. 9726 Dt. 6th 04-1947

lhi
SC. dated 14-3-50

Civil Supplies Department,
Bombay Castle, October 1947.

ORDER.

Essential Supplies (Temporary Powers) Act, 1946.

No. - In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XX V of 1946), read with the Government of India, Department of Food, Notification No.PV.C03(2)-T, dated the 21st October 1950, the Government of Bombay is pleased with the previous concurrence of the Central Government to make the following Order, namely:-

1. Every person in charge of a grinding mill (Chakki) shall-

(a) maintain on the premises of the grinding mill a set of standard weights and weighing instruments;

(b) if so required by a customer, weigh in the presence of the customer the grain given by him for grinding and after grinding the flour thereof;

(c) deliver to the customer in return flour of the grain the weight of which is not less than 93 7/8 per cent. or 31/32nd of the grain given for grinding.

2.(i) This Order extends to the whole of the Province of Bombay except the City of Bombay and the Bombay Suburban District as constituted immediately before the 1st day of October 1945.

(ii) It shall come into force in such area and on such date as the Provincial Government may, by notification in the Official Gazette, direct.

By order of the Governor of Bombay

Secretary to Government.

[illegible]
50, dated 14-5-'50

Office of the R.L.A.

There would be no legal objection to making an order under the Essential Supplies (Temporary Powers) Act, 1946, on the lines of the Government Order No.710/II, dated the 11th November 1946 at page 5 ante but it should be made in exercise of the powers conferred by section 3 of the Act generally and not specifically under clause (f) of sub-section (2) of that section as in the Government Order referred to.

S.D.

Secretariat of Legal Affairs.

2. & C.S.D., No. 10595 dt. 4th Nov., 1947

II
IC, dated 14-5-150.

Office of the D.J.A.

Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, gives power to the Government to make an order for regulating or prohibiting the production, supply and distribution of an essential commodity for inter alia securing the equitable distribution and availability at fair prices of the supplies of such commodity. Clause (d) of sub-section (2) of section 3 of the Act contemplates the making of an order for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. The word used in this clause is "regulating". As held in the case of "Dick vs. Rodart" (1933) 10 C.B.D. 337, a power to regulate does not include a power to prohibit. In that case a dock company, who were undertakers under a special Act, had made by-laws prohibiting workmen of a specified class from working on board any vessel in the dock, unless authorized by the company or unless permission in writing had previously been obtained from the superintendent of the dock. The company had statutory powers to make by-laws (among other purposes) for regulating shipping, unshipping and removing of all goods within the limits of the dock and for regulating the duties and conduct of all persons, whether the servants of the undertakers or not, employed in the dock. It was held that the by-law excluding that particular class of workmen was beyond the powers conferred by the Act; first, because section 3 of the 1847, which was incorporated in the Special Act, [illegible] Harbours, Docks and Piers Clauses Act, had declared that, subject to certain specified conditions in any special Act authorizing the construction of any dock, the harbour, docks and pier should be open to all persons for shipping and unshipping of goods, and secondly, because a power to make by-laws for regulating the duties and conduct

P.T.O.

of persons exployed in the docks could not authorize a by-law excluding a specified class of persons. Similarly under the Essential Supplies (Temporary Powers) Act an order cannot be made excluding a specified class of persons from the distribution of any essential commodity. The proposed amendment to the Rationing Order would, therefore, be considered as invalid. The Object can be achieved in a proper legal manner by making suitable provision in the Ordinance proposed to be issued in respect of refugees.

P.M. LDR.

Remembrancer of Legal Affairs.

U.K. & C.S.D, No. 10894 dt. 17th Nov. 1947.

SC. dated 14-5-'56.

Civil Supplies Department,

Bombay Castle, December 1947.

Essential Supplies (Temporary Powers) Act, 1946.

No. 9251/47.- In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), read with the Government of India, Department of Food, Notification No. 87.663(3)-I, dated the 21st October 1946, and with the previous concurrence of the Central Government, the Government of Bombay is pleased to make the following Order, namely:-

(i) No person shall remove by rail, road, water or air, any quantity of any of the foodgrains specified in Schedule I hereto, from any place within the districts specified in Schedule II hereto to any place in the areas specified in Schedule III hereto except under and in accordance with a permit granted by the Commissioner, Northern Division.

(ii) No person shall remove by rail, road, water or air, any quantity of any of the foodgrains specified in Schedule I hereto, from any place within the areas specified in Schedule III hereto to any place in the districts specified in Schedule II hereto, except under and in accordance with a permit granted by the Director of Civil Supplies, Bombay, or by any officer authorised by him in this behalf.

Schedule I.

Rice, wheat, jowar, bajri, barley and ragi and their flours.

Schedule II.

Ahmedabad, Kaira, Panch Mahals, Broach and Surat

Schedule III.

Bombay City and Bombay Suburban District, Kirandongar, West Khandesh, East Khandesh, Nasik,

Poona, Satara, Sholapur, Belgaum, Bijapur, Dharwar, Kanara, Ratnagiri, Kolaba and Thana districts.

By order of the Governor of Bombay,

D.S. Bathle,
Secretary to Government.

MM:
SC: dated 15-5-'56

Office of the R.L.A.

A revised draft order is sent herewith.

Before it is issued it will be necessary to obtain the previous concurrence of the Central Government, as required by Government of India Notification No. 603(2)-I, dated the 21st October 1946 read with section 3(2)(d) of Act XXIV of 1946.

P.M.LRD

Remembrancer of Legal Affairs.

U.R.-h C.S.D., No. 434 Confl. dt. 9th Dec. 1947.

MM.
5C. dated 15-5-'56.